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13
14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**

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17 In Re *Ex Parte* Application of
18 Path Network, Inc. and Tempest Hosting,
LLC,

20 Applicants.
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22 CASE NO. 3:23-MC-80148-PHK
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24 [MAGISTRATE JUDGE PETER H. KANG]
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26 **JOINT STIPULATION AND**
27 **[PROPOSED] ORDER**
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1 Pursuant to the Court's August 23, 2023 order subd. (3) pp. 2-3, Applicants Path Network,
 2 Inc. ("Path") and Tempest Hosting, LLC ("Tempest") (collectively "Applicants") and Respondent
 3 Discord Inc. ("Discord") hereby stipulate as follows:

4 1. A commissioner does not need to be appointed in this matter.
 5 2. If the Application is granted and a subpoena is issued in accordance with Fed. R.
 6 Civ. P. 45, Discord does not object to the production of the following data responsive to the
 7 following requests in the subpoena that Applicants filed with the Court on May 22, 2023 (the
 8 "Discord Subpoena"):

- 9 • 1) All account data, not including the contents of electronic
 10 communications, associated with Curtis Gervais, including
 any aliases he used, such as cmg#82391;
- 11 • 2) All account data, not including the contents of electronic
 12 communications, associated with Rene Roosen, including
 any aliases he used, such as Renual#7394;
- 13 • 3) All account data, not including the contents of electronic
 14 communications, associated with Archetype#8484;
- 15 • 4) Roosen, Gervais and Archetype#8484's login history for
 16 any and all Discord accounts, including but not limited to
 cmg#8239, Renual#7394, and Archetype#8484; and
- 17 • 5) Any and all headers of messaging data associated with
 18 any of Roosen, Gervais, or Archetype#8484's Discord
 19 account(s) including cmg#8239, Renual#7394 and
 Archetype#8484.

20 3. "Account data" includes a user's first and last name, email address, birthdate, and
 21 any other non-content identifying information for a specific user.

22 4. "Header" includes the name and email addresses of the sender, recipient, and any
 23 copied or blind copied recipients in a particular Discord message, and the time that message was
 24 sent and/or received.

25 5. Any revised Discord Subpoena that Applicants submit to the Court for approval
 26 may include request nos. 1-5 above subject to the restrictions therein.

27 6. Any revised Discord Subpoena will not exceed the bounds of the production
 28 orders issued by the Superior Court of Justice in Ontario, Canada in the Canadian proceedings for

1 which the instant discovery is sought. Applicants shall ensure that the requests are narrowly
 2 tailored to those orders.

3 7. Discord is under no obligation to produce data responsive to the revised Discord
 4 Subpoena until (1) the Court rules on the Parties' supplemental briefing to be filed on September
 5 1, 2023 and September 8, 2023, (2) Applicants file a valid, revised Discord Subpoena, and (3) the
 6 Court issues it.

7 8. At the time of production in response to the revised Discord Subpoena, Discord
 8 will use the additional identifying information sent to it by Applicants on August 17, 2023 to
 9 guide its search for responsive data.

10 9. Applicants and Discord will brief the following issues on September 1, 2023 and
 11 September 8, 2023:

- 12 • Whether Discord can be prevented from notifying Gervais
 of the Discord Subpoena;
- 13 • Whether passwords constitute non-content exempt from the
 Stored Communications Act ("SCA");
- 14 • Whether Gervais has impliedly consented to the disclosure
 of his Discord communications such that the SCA does not
 require his express consent to Discord's disclosure; and
- 15 • Whether a litigation hold pausing any of Discord's routine
 deletion procedures is required, notwithstanding Discord's
 preservation of all responsive accounts.

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 19 **IT IS SO STIPULATED.**

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 21 DATED: September 1, 2023

22 By: /s/ Hannah A. Bogen
 23 Rita M. Haeusler
 24 Hannah A. Bogen
 25 Hughes Hubbard and Reed LLP
 26 Attorneys for Applicants Path Network, Inc.
 27 and Tempest Hosting, LLC

28 DATED: September 1, 2023

29 By: /s/ Nury M. Siekkinen
 30 Nury M. Siekkinen
 31 Zwillgen PLLC
 32 Attorney for Respondent Discord, Inc.

1 PURSUANT TO THE ABOVE STIPULATION, IT IS SO ORDERED.
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4 DATED: _____, 2023

5 _____
6 United States Magistrate
7 Judge Peter H. Kang
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